

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

EDDIE RENCHER, JR., ) 2:11-cv-01040-RCJ-GWF  
Plaintiffs, )  
vs. ) **ORDER**  
STATE OF NEVADA, et al., )  
Defendants. )

On November 4, 2011, the court issued a Screening Order directing that most of plaintiff's claims shall proceed and dismissing defendants Scott Graham and MBI, Inc. from the action (ECF #21). Before the court is plaintiff's motion for relief from Order under Federal Rule of Civil Procedure 60(b) (ECF #23).

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9<sup>th</sup> Cir. 1993), cert. denied 512 U.S. 1236 (1994).

Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or

1                   discharged, or a prior judgment upon which it is based has been reversed  
 2                   or otherwise vacated, or it is no longer equitable that the judgment should  
 3                   have prospective application; or (6) any other reason justifying relief  
 4                   from the operation of the judgment.

5 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*  
 6 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party  
 7 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior  
 8 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986),  
 9 *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9<sup>th</sup> Cir. 1987). Rule 59(e) of the Federal  
 10 Rules of Civil Procedure provides that any “motion to alter or amend a judgment shall be filed no later  
 11 than 28 days after entry of the judgment.” Furthermore, a motion under Fed. R. Civ. P. 59(e) “should  
 12 not be granted, absent highly unusual circumstances, unless the district court is presented with newly  
 13 discovered evidence, committed clear error, or if there is an intervening change in the controlling law.”  
*Herbst v. Cook*, 260 F.3d 1039, 1044 (9<sup>th</sup> Cir. 2001), quoting *McDowell v. Calderon*, 197 F.3d 1253,  
 14 1255 (9<sup>th</sup> Cir. 1999).

15                  In its Order dated November 4, 2011, the court dismissed defendants Scott Graham and  
 16 MBI, Inc., on the basis that plaintiff did not set forth more than bare, conclusory allegations that these  
 17 defendants—who according to the complaint are not state actors—conspired with prison personnel to  
 18 deprive plaintiff of his civil rights (ECF #21). Plaintiff has failed to make an adequate showing under  
 19 either Rule 60(b) or 59(e) that the portion of this court’s Order dismissing these defendants should be  
 20 reversed.

21                  **IT IS THEREFORE ORDERED** that plaintiff’s motion for relief from Order under  
 22 Federal Rule of Civil Procedure 60(b) (ECF #23) is **DENIED**.

23                  Dated this 7<sup>th</sup> day of December, 2011.

24                  \_\_\_\_\_  
 25                  R. Jones  
 26                  UNITED STATES DISTRICT JUDGE  
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